IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	Case No. 4:10CR3113
Plaintiff,) Case No. 4:10CR3113	
vs.)	TENTATIVE FINDINGS
JOSE A. ESPINOZA,)	THOMOS
Defendant.)	

I am in receipt of the revised presentence investigation report and the defendant's objections and motion for departure or variance in this case.

IT IS ORDERED that:

- (1) The undersigned will consult and follow the Guidelines to the extent permitted and required by *United States v. Booker*, 543 U.S. 220(2005) and subsequent cases. *See*, *e.g.*, *Gall v. U.S.*, --- S.Ct. ----, 2007 WL 4292116 (2007). In this regard, the undersigned gives notice that, unless otherwise ordered, he will (a) give the advisory Guidelines such weight as they deserve within the context of each individual case and will filter the Guidelines' general advice through §3553(a)'s list of factors¹; (b) resolve all factual disputes relevant to sentencing by the greater weight of the evidence and without the aid of a jury; (c) impose upon the government the burden of proof on all Guideline-enhancements; (d) impose upon the defendant the burden of proof on all Guideline-mitigators; (e) depart from the advisory Guidelines, if appropriate, using pre-Booker departure theory; and (f) in cases where a departure using pre-Booker departure theory is not warranted, deviate or vary from the Guidelines when there is a principled reason which justifies a sentence different than that called for by application of the advisory Guidelines.²
- (2) The defendant's objection to presentence report (filing 71), the defendant's additional objection to presentence report (filing 74), and the defendant's motion for departure or variance (filing 75) will be resolved at sentencing.

^{&#}x27;However, I will no longer give the Guidelines "substantial weight."

²See note 1.

(3) Except to the extent (if at all) that I have sustained an objection or granted a

motion or reserved an issue for later resolution in the preceding paragraph, the parties are

herewith notified that my tentative findings are that the presentence report is correct in all

respects.

(4) If **any** party wishes to challenge these tentative findings, said party shall, as soon

as possible, but in any event at least five (5) business days before sentencing, file in the court

file and serve upon opposing counsel and the court a motion challenging these tentative

findings, supported by (a) such evidentiary materials as are required (giving due regard to the

requirements of the local rules of practice respecting the submission of evidentiary materials),

(b) a brief as to the law and (c) if an evidentiary hearing is requested, a statement describing

why an evidentiary hearing is necessary and how long such a hearing would take.

(5) Absent submission of the information required by the preceding paragraph of this

order, my tentative findings may become final and the presentence report may be adopted and

relied upon by me without more.

(6) Unless otherwise ordered, any motion challenging these tentative findings shall

be resolved at sentencing.

October 18, 2011.

BY THE COURT:

Richard G. Kopf

United States District Judge

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